IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/12/2002

CORAM

THE HON'BLE MR.JUSTICE N.V.BALALSUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE K.RAVIRAJA PANDIAN

T.C.No.209 OF 1999
(Reference No.205 of 1999)

The Commissioner of Income-tax
Coimbatore. ... Applicant

-Vs-

K. Dadakhan,
Pollachi ... Respondent

!For Applicant: Mr.T.Ravi Kumar
Jr.Standing Counsel for
Income-tax cases.

For Respondent:Mr.V.Ramachandran
Senior Counsel for
Mrs. Anitha Sumantha

Prayer: Statement of the Case in R.A.No.564/Mds/1996 (I.T.A.No.4078/Mds/1989) for the assessment year 1983-84 on the file of the Incometax Appellate Tribunal, C Bench, Madras forwarded for decision of the High Court.

:ORDER

K.RAVIRAJA PANDIAN,J.

At the instance of the Revenue, the Income Tax Appellate Tribunal set out a case and referred the following question of law for the opinion of this Court.

" Whether , on the facts and in the circumstances of the case, the Tribunal was right in law and had valid materials to disregard the sale price of the property as recorded in the agreement dated 21.2.1983 which was seized under Section 132 and holding that the market value was only Rs.76,000/- and

restricting the addition to the total income of the assessee to Rs.36,000/- as against the addition of Rs.1,67,00 0/- made by the assessing authority ?"

2. The assessee, an individual entered into an agreement of sale on 21.2.1983 with one Arumugam for purchase of land in an extent of 0.75 acres with an uncompleted structure of Cinema Theatre for a total consideration of Rs.2,07,000/-. The said agreement was seized by the Revenue in the course of search conducted. The sale deed was registered on 2.3.1983 for a consideration of Rs.40,000/-. The assessee claimed that the expenditure laid out was only Rs.47,000/-,which includes the sale consideration of Rs.40,000 and other expenses towards registration and stamp duty in a sum of Rs.7000/-. The assessing officer made an addition of Rs.1,67,000 representing the difference in the value between the sale agreement dated 21.2.1983 and the sale deed dated 2.3.1983. On appeal, the Commissioner of Income Tax (Appeal) deleted the addition made by the assessing officer.

3. The Tribunal on further appeal at the instance of the Revenue refixed the addition to Rs.36,000 on the ground that the assessee agreed before Commissioner of Income Tax (Appeals) of the valuation arrived at by the Inspector in a sum of Rs.76,000. The Revenue being not satisfied with the finding of the Tribunal moved for reference and hence the above reference.

4. Mr. T.Ravi Kumar, Learned counsel appearing for the Revenue submitted that the Tribunal erred in accepting the valuation arrived at by the Inspector, which has no legal base. He further submitted that the reason adopted by the Tribunal to disregard the agreed value in the agreement dated 21.2.1983 is unsustainable in law. He further contended that the explanation offered by the assessee for inflation of the value of the property in the agreement was not substantiated by the assessee. He further submitted that when the vendor himself admitted that he purchased the property for Rs.6000/- and expended more than Rs.50,000 in putting up construction, by no stretch of imagination, it could be accepted or it could be considered as true that the property was sold by him for a sum of Rs.40,000/-. He further highlighted that as per the agreement, the assessee has paid a sum of Rs.4 5,000/- as advance, which is more than the total consideration as stated in the sale deed. Hence he submitted that the value stated in the sale deed is not reflecting the correct value of the property purchased. He further contended that when there are two prices, one as per the sale agreement and the other as per the sale deed are available, the Tribunal could have accepted either of the price by adducing proper reasoning for the same. But, strangely in this case accepted a value in between the two prices on the ground that the value has been arrived at by the Inspector of the Department and the same has been accepted by the assessee before the Commissioner of Income Tax (Appeals), which is unsustainable in law.

5. On the other hand Mr.V.Ramachandran, learned Senior Counsel appearing for the assessee submitted that there is no wrong in accepting the value arrived at by the Inspector , who is also a departmental official. Though the assessee is not legally bound by the valuation arrived at by the Inspector, in order to give quietus to the issue, the assessee has accepted the valuation and this is the only reason for the assessee for not moving for a reference against the order of the Tribunal fixing the value at Rs.76,000/-. He further contended that when an incomplete structure is offered for sale, it always attached with sentiment and would not fetch a fair market price. In such an event, there is no surprise for a needy vendor to

sell his property for his immediate needs for a lower price than the market price. The circumstances, under which the vendor sells the property weigh much in determining the value. The vendor has explained the circumstances, under which he was compelled to sell the property. There is no contra material evidence produced by the department either to discredit the statement of the vendor or to prove that the price stated in the agreement has been paid by the assessee. The acceptance of the value fixed by the Inspector of the Department cannot be put against the assessee.

6. We carefully considered the argument of the learned counsel on either side and perused the materials on record.

7. It is evident from the records that the assessee has entered into an agreement of sale on 21.2.1983 for the purchase of the land in an extent of 0.75 acres with an incomplete superstructure thereon. The sale consideration was shown as Rs.2,07,000/-. It is also stated in the agreement that the assessee had paid a sum of Rs.45,000 as advance in respect of the sale transaction. The sale deed pursuant to the agreement was registered on 2.3.1983, wherein the sale consideration had been shown as Rs.40,000/- In the statement at the time of search , the assessee has explained that the agreement was a bogus one and made up for the purpose of obtaining loan for completing the cinema theatre. However, the assessee explained that the parties from whom loan to be obtained were not finalised. The vendor of the property one Arumugam, on examination by the Assessing Officers, has stated that he purchased the land for a consideration of Rs.6000/- and had spent upto Rs.50,000 on the construction of the theatre on the land. He further stated that he could not proceed further the construction due to his, his wife's and his son's ill health and financial difficulty. He sold the property to the assessee for Rs.40,000/- and further stated that in the agreement dated 21.2.1983 the price was inflated for the purpose of obtaining loan by the assessee.

8. If the amount of the sale consideration was an an inflated one for the purpose of putting up the construction as contended by the assessee and his vendor, the assessee would have proved the same by referring the further action taken by him in order to obtain loan on the basis of the agreement. For obtaining a loan for putting up the construction, no one would rely upon an agreement of sale rather than the sale deed , which only confers title on the assessee. The person without title cannot obtain loan on the basis of an agreement for purchase of the property. Further, the time within which the sale deed has been executed, which is hardly within 10 days from the date of execution of the agreement, would belie the statement of the assessee and his vendor. The further feature that the assessee has paid Rs.45 ,000/- as advance on the date of execution of the sale agreement also strengthen the case of the Revenue. If really the sale price is only Rs.40,000, there is no question of paying over and above the sale consideration as advance. The receipt of Rs.45,000/- has not been denied by the vendor of the assessee and the assessee has also not spoken about the excess payment of advance. In respect of sale or purchase of immovable property, the parties after negotiating the terms of the sale transaction arrive at certain terms with regard to the price and the time within which the sale has to be executed and thereupon extract the terms and conditions by means of agreement. The

agreement would bind both the parties and in case of breach of terms and conditions, it is always open to the parties to the agreement to take recourse. If the parties arrive at certain variation in the terms of the agreement, definitely, they would have entered into another agreement by incorporating the varied conditions therein. Such is not the case here.

9. The submission made on behalf of the assesse that the agreement had not been acted upon also cannot be accepted, inasmuch as the sale deed has been executed only pursuant to the sale agreement. Hence it is the bounden duty of the assessee to prove that the sale consideration as stated in the agreement has not been paid. Except the statement, there is no material forthcoming from the assessee to the effect that the assessee paid only Rs.40,000. In the absence of any such material evidence produced by the assessee, the contention of the Revenue that the sale consideration is only as agreed in the agreement cannot be faulted. The valuation as fixed by the Inspector is also not based on any material. There is absolutely no legal base for arriving the value by the Inspector of the Department. Out of the two amounts, one as stated in the agreement and another as stated in the sale deed , if the Tribunal is not accepting the amount as stated in the sale deed, the only option available to the Tribunal is to accept the agreement amount as the sale consideration, in the absence of any material to the contra.

10. Further the statement of the vendor that he purchased the property for a sum of Rs.6000/- and expended nearly a sum of Rs.50,000/- for the purpose of construction would also militate against the assessee as to the payment of consideration in a sum of Rs.40,000/- . Whatever may be the circumstances, in which the vendor was placed, the consideration as to escalation of price during the relevant period in respect of the landed property and the amount spent thereon by the vendor for putting up construction would also lean in favour of the Revenue to come to the conclusion that the sale consideration shown in the sale deed is not correct and the consideration stated in the agreement is the real amount. The reasoning given by the Tribunal that the department has not brought any evidence to show that the assessee has purchased the property for Rs.2,07,000 is misconceived in the sense that when the document of sale agreement is available showing the sale consideration as Rs.2,07,000/- it is for the assessee to prove by acceptable evidence that the sale consideration as shown in the agreement is only an inflated price by producing material evidence, atleast the guideline value of the land and the value of the superstructure from the registration department and from the approved valuer. Such course of action has not been taken by the assessee. Even the valuation arrived at by the Inspector is also not based on such materials. Yet another factor that the assessee accepting the valuation of Rs.76,000/- as fixed by the Inspector would also clinch the issue in favour of the Revenue. The reasoning stated that in order to purchase peace, the assessee has accepted the amount would not stand to reason. When the reasoning given for the alleged inflation of sale consideration has been itself negatived and the value as arrived at by the Inspector is also not based on any acceptable material evidence, we are of the view that the consideration as stated in the sale agreement is the correct price paid by the assessee for the purchase of the property and the Tribunal has erred in accepting the value arrived at Rs.76,000/- by the Inspector as the sale price.

11. Learned counsel for the assessee relied on the judgment

of this Court in COMMISSIONER OF INCOME-TAX VS. SRI PADMAVATHI COTTON MILLS (1999) 236 ITR 340 to sustain the argument that the sale consideration stated in the agreement of sale is inflated one. That was a case, in which the assessee had declared a higher quantity of closing stock to the bank for the purpose of securing a loan than the one accounted in the books of accounts and returned in the returns filed by the assessee. In the facts and circumstances of that case, the Tribunal came to the conclusion that the closing stock declared in the return filed by the assessee was based on the books of accounts and having found so, the Tribunal accepted the closing stock declared to the Bank for the purpose of obtaining a loan is an inflated one. In that case, there are materials to prove that the assessee had declared to the bank an inflated closing stock for the purpose of getting loan and on facts it has been found that the returned closing stocks are in conformity with the books of accounts. But in the facts of the present case, there is no such material available to prove that the agreement consideration was inflated for the purpose of obtaining loan. There is absolutely no iota of evidence to prove the said contention. Hence the above said judgment, in our considered view, is not applicable to the facts of the present case.

12. The same is the position in respect of the other decision relied on by the learned counsel for the assessee in the case of COMMISSIONER OF INCOME -TAX MADRAS VS. RAMAKRISHNA MILLS (COIMBATORE) LTD (197 4) 93 ITR 49 . In that case also the addition made to the income returned by the assessee on the ground that there was discrepancy between the stock shown in its account books and the declarations made by it to the banks with whom the goods had been hypothecated for the purpose of obtaining overdraft facilities was deleted by the Tribunal on the ground that though the declarations made to the banks were only rough estimates the correct declarations had been made in the returns submitted to the Textile Commissioner and these tallied with the assessee's books. In that factual situation, the Tribunal was justified in coming to the conclusion that the addition made on the basis of the declaration made to the bank was not correct. This decision is also not applicable to the facts of the present case, for the very reasons stated above.

` 13. In fine, the order of the Tribunal, for the reasons as stated above is not legally sustainable and liable to be set aside and that of the Assessing Officer has to be restored. For the foregoing reasons, we answer the question in negative against the assessee and in favour of the Revenue. However, there is no order as to costs.

Index:Yes
Website:Yes

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To

1. The Assistant Registrar,
Income-tax Appellate Tribunal,
Rajaji Bhavan, Besant Nagar,
Chennai-600 090,

2. The Secretary,
Central Board of Direct Taxes
New Delhi

3. The Commissioner of Income-tax
Tamil Nadu-I,
Madras,

4. The Commissioner of Income-tax
(Appeals), Coimbatore,

5. The Inspecting Assistant Commissioner,
of Income-tax (Assessment), Range-II,
Coimbatore.